



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS-2018-0046]

RIN 0750-AK01

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Indefinite Quantities--Fixed Charges" (DFARS Case 2018-D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]** .

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS clause 252.247-7004, Indefinite Quantities--Fixed Charges, and the associated clause prescription at DFARS 247.270-4(d). When applicable, the

DFARS clause is used in indefinite-delivery, indefinite-quantity contracts for stevedoring services to notify the contractor that the Government is obligated to pay the contractor the fixed monthly amount established in the contract.

This notification is not necessary, since line items are established in all contracts to describe the items being purchased, as well as the pricing, funding, and delivery information for each item. The award of the contract is the Government's agreement to pay the contractor for the line items, in accordance with the contract; therefore, this DFARS clause provides no additional benefit for the contractor or the Government. As such, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on

August 1, 2017, and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247-7004, Indefinite Quantities--Fixed Charges, and determined that the DFARS clause was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes DFARS clause 252.247-7004, Indefinite Quantities--Fixed Charges, which is obsolete. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget

(OMB), Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new

regulation; rather, this rule merely removes an obsolete notification from the DFARS.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247 TRANSPORTATION

247.270-4 [Amended]

2. Amend section 247.270-4 by-
 - a. Removing paragraph (d); and
 - b. Redesignating paragraph (e) as paragraph (d).

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247-7004 [Removed and Reserved]

3. Remove and reserve section 252.247-7004.

252.247-7007 [Amended]

4. Amend section 252.247-7007, in the introductory text, by removing "247.270-4(e)" and adding "247.270-4(d)" in its place.

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